

Introduced by: Mr. Powers, Mr. Sheldon

Date of introduction: March 22, 2011

ORDINANCE NO. 11-032

**TO AMEND NEW CASTLE COUNTY CODE,
CHAPTER 38 ("UTILITIES") REGARDING
ARTICLE 2 ("SEWERS AND SEWAGE DISPOSAL") AND ARTICLE 3 ("PROHIBITION,
ENFORCEMENT, AND PENALTIES")**

WHEREAS, the United States Environmental Protection Agency ("EPA") enacted a set of regulations known as the Pretreatment Streamlining Rules; and

WHEREAS, these EPA Pretreatment Streamlining Rules contain recommendations and requirements for the New Castle County ("County") wastewater pretreatment program, which are proposed for incorporation into the *New Castle County Code* ("County Code"); and

WHEREAS, the County also wishes to incorporate additional amendments to the *County Code* in order to improve its pretreatment program; and

WHEREAS, the County therefore proposes the below modifications to Chapter 38 of the *County Code*; and

WHEREAS, New Castle County Council has determined that the provisions of this Ordinance substantially advance, and are reasonably and rationally related to, the legitimate government interest of promoting the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of this County.

NOW, THEREFORE, THE COUNTY OF NEW CASTLE HEREBY ORDAINS:

Section 1. *New Castle County Code* Chapter 38 ("Utilities"), Article 2 ("Sewers and Sewage Disposal"), Division 38.02.000 ("Generally"), Section 38.02.008 ("Discharge of hauled waste") is hereby amended by deleting the material in strikethroughs and adding the material that is underscored, as set forth below:

Sec. 38.02.008. Discharge of hauled waste.

D. Fees. Fees for waste haulers shall be as follows:

1. *Permit fees.* The waste hauler permit fee shall be one hundred dollars (\$100.00) per vehicle for a full calendar year. For permits issued after March 31st of any year, the fee shall be ten dollars (\$10.00) for each month or part of a month remaining in the calendar year. There shall be no refund for suspended or canceled permits. The waste hauler permit fees in this Section shall be adjusted each year effective on July 1st to reflect the

increase, if any, by which the consumer price index for the most recent year exceeds the consumer price index for the previous year. The amount of the change in the fee shall be determined by multiplying the existing fee by the percentage change in the consumer price index and rounding the result to the nearest dollar. The consumer price index for any year is the average of the consumer price index for all urban consumers published by the US Department of Labor for the Philadelphia-Wilmington-Atlantic City area as of the close of the twelve (12) month period ending on April 30th of each year. In years that the consumer price index does not change or decreases from the previous year, the fees shall remain the same.

2. *User fees.* ... The County shall bill each permitted sanitary waste hauler on a quarterly basis for each truckload discharged at the depository in that period—schedule set by the Department of Special Services. All billings shall be paid in full within thirty (30) days of receipt or access to the depository will be denied. All billings shall be considered received by the waste hauler on the third business day after the date of County's mailing.

...

Section 2. *New Castle County Code Chapter 38 ("Utilities"), Article 2 ("Sewers and Sewage Disposal"), Division 38.02.700 (Regulation of non-domestic wastewater discharges into the public sewer system"), Section 38.02.701 ("Definitions") is hereby amended by deleting the material in strikethroughs and adding the material that is underscored, as set forth below:*

Sec. 38.02.701. Definitions.

...

Best Management Practices ("BMP") Manual means ~~the BMP requirements and recommended practices maintained by the Department of Special Services and issued to all commercial food establishments;~~ schedules of activities, prohibitions or practices, maintenance procedures, and other management practices to implement the prohibitions listed in Section 38.02.702 and the requirements and recommended practices listed in the Commercial Food Establishments BMP Manual.

...

Commercial Food Establishments BMP Manual means the best management practice requirements and recommended practices maintained by the Department of Special Services and issued to all commercial food establishments.

...

Significant noncompliance means any one (1) or more of the following:

- A. Chronic violations of wastewater discharge limits in which sixty-six (66) percent or more of all of the measurements taken for the same pollutant parameter during a six (6) month period equal or exceed the (by any magnitude) a numeric pretreatment

standard or requirement, including instantaneous permit limits for the same pollutant parameter.

- B. Technical review criteria (TRC) violations in which thirty-three (33) percent or more of all of the measurements taken for a the same pollutant parameter taken during a six (6) month period equal or exceed the product of the numeric pretreatment standard or requirement including instantaneous permit limit, as defined by 40 CFR 403.3(l) multiplied by the applicable TRC criteria. (TRC=one and four-tenths (1.4) for BOD, TSS, fats, oil and grease, and one and two-tenths (1.2) for all other pollutants except pH.)
- C. Any other violation of a pretreatment effluent-limit standard or requirement as defined by 40 CFR 403.3(l) (daily maximum, long-term average, instantaneous effluent limit, or narrative standard) that the eCounty determines has caused, alone or in combination with other discharges, interference or pass through, including endangering the health of POTW personnel or the general public.
- D. Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's County's exercise of its emergency authority to halt or prevent such a discharge.
- E. Failure to meet, within ninety (90) days after a schedule date, a compliance schedule milestone contained in the wastewater discharge permit or enforcement order for starting construction, completing construction or attaining final compliance.
- F. Failure to provide within ~~thirty (30)~~ forty-five (45) days after the due date, any required reports such as baseline monitoring reports, ninety (90) day compliance reports, compliance with categorical pretreatment standard deadlines, periodic self-monitoring reports, and reports on compliance schedules.
- G. ...
- H. Any other violation or group of violations, which may include a violation of Best Management Practices, which the County determines will adversely affect the operation or implementation of the local pretreatment program.

...

Section 3. *New Castle County Code Chapter 38 ("Utilities"), Article 2 ("Sewers and Sewage Disposal"), Division 38.02.700 (Regulation of non-domestic wastewater discharges into the public sewer system"), Section 38.02.703 ("Maximum constituents") is hereby amended by deleting the material in strikethroughs and adding the material that is underscored, as set forth below:*

Sec. 38.02.703. Maximum constituents.

...

G. General requirements.

1. All industrial users shall:

- a. In accordance with 40 CFR 403.12, maintain records of flow and discharge characteristics, including documentation associated with Best Management Practices, as well as any industry specific information that may be relevant to determining the facility's status for pretreatment permitting requirements (whether or not such monitoring activities are required by this Section) for a minimum of three (3) years. Such records shall include for all samples: (i) the date, exact place, method, and time of sampling and the name(s) of the person(s) taking the samples; (ii) the dates analyses were performed; (iii) who performed the analyses; (iv) the analytical techniques/methods used; and (v) the results of such analyses. This period of retention shall be extended during the course of any unresolved litigation involving the user or when requested by the General Manager. ...

...

Section 4. *New Castle County Code Chapter 38 ("Utilities"), Article 2 ("Sewers and Sewage Disposal"), Division 38.02.700 (Regulation of non-domestic wastewater discharges into the public sewer system), Section 38.02.704 ("Wastewater discharge permits") is hereby amended by deleting the material in strikethroughs and adding the material that is underscored, as set forth below:*

Sec. 38.02.704. Wastewater discharge permits.

A. Permit application criteria.

1. All industrial users proposing to discharge into a public sewer, shall submit an application for a wastewater discharge permit, and if required, obtain a wastewater discharge permit prior to connecting to or discharging into a public sewer. Any user connected to the public sewer system may also be required to submit an application for a wastewater discharge permit upon receiving written notice from the General Manager. ...
2. All significant industrial users are required to obtain a wastewater discharge permit in accordance with this Section. In compliance with 40 CFR 403.12, all significant industrial users, at a frequency determined by the General Manager but in no case less than twice per year, shall conduct sampling and shall submit a report indicating the nature and concentration of pollutants in the discharge which are limited by pretreatment standards, and the measured or estimated average and maximum daily flows for the reporting period, and compliance with Best Management Practices, if required.

B. *Permit application.* ...

15. Documentation of compliance with any applicable Best Management Practices when they are required.

C. ...

D. *Permit conditions.* ...

10. The requirement to notify the County in advance of any planned substantial significant change in the volume or character of pollutants in the discharge, or to notify the County immediately after discovery of any unplanned significant change.

11. ...

12. The requirement that all users shall notify the General Manager of any significant changes to the user's operations or system that may affect the potential for slug discharges at least ninety (90) days before the change.

13. The requirement to develop and implement a slug control plan if required by the General Manager.

14. Best Management Practices, when applicable.

~~12.~~ 15. Other conditions as deemed appropriate by the General Manager to ensure compliance.

E. *Reporting requirements.*

...

3. *Filing of periodic discharge/compliance reports.* The discharge report may include, but not be limited to, wastewater volume rates of flow, constituent concentrations and mass emission rates, compliance with Best Management Practices, hours of operation, number of employees, or other information which relates to the wastewater discharge to the sewers. ...

...

I. *Permit fees.* ...

2. The fees to be paid for the issuance and/or modification of wastewater discharge permits and/or granting of variances shall be as follows:
 - a. Annual fees (sum of applicable categories listed below for the permittee):

EPA categorical standard	\$2500.00
Process flow > 25,000 gallons per day	\$2500.00
Toxic chemical POTW transfer	\$2000.00
Nonsignificant industrial user	\$1000.00
Permit variance(s)	\$1500.00
 - b. Single occurrence fees:

Significant industrial user permit amendment	\$1250.00
Nonsignificant industrial user permit amendment	\$500.00
3. ~~Initial permit fees shall be paid within thirty (30) days of final permit issuance, and shall be prorated based on the number of full months in which the permit is in effect.~~
The permit fees in this Subsection shall be adjusted each year effective on July 1st to reflect the increase, if any, by which the consumer price index for the most recent year exceeds the consumer price index for the previous year. The amount of the change in the fee shall be determined by multiplying the existing fee by the percentage change in the consumer price index and rounding the result to the nearest dollar. The consumer price index for any year is the average of the consumer price index for all urban consumers published by the US Department of Labor for the Philadelphia-Wilmington-Atlantic City area as of the close of the twelve (12) month period ending on April 30th of each year. In years that the consumer price index does not change or decreases from the previous year, the fees shall remain the same.
4. Fees shall be paid by the date designated by the General Manager, and Ffees collected shall be deposited in the sewer fund.
5. ~~Permit fees listed above shall be effective July 1, 1999.~~

Section 5. *New Castle County Code Chapter 38 ("Utilities"), Article 2 ("Sewers and Sewage Disposal"), Division 38.02.700 (Regulation of non-domestic wastewater discharges into the public sewer system"), Section 38.02.706 ("Compliance monitoring") is hereby amended by deleting the material in strikethroughs and adding the material that is underscored, as set forth below:*

Sec. 38.02.706. Compliance monitoring.

A. ...

B. ...

C. Sample collection. With the exception of samples for oil and grease, temperature, pH, cyanide, total phenols, sulfides, volatile organic compounds which must be obtained by grab collection techniques, the user must collect wastewater samples using twenty four (24) hour flow-proportioned composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the General Manager. Where time-proportional composite or grab sampling is authorized, the samples must be representative of the discharge. Using protocols (including appropriate preservation) specified in 40 CFR 136 and appropriate EPA guidance, multiple grab samples collected during a twenty four hour (24) period may be composited prior to the analysis as follows; for cyanide, total phenols, and sulfides, the samples may be composited in the laboratory or in the field; and for volatile organics and oil and grease, the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the composting procedures as documented in approved EPA methodologies may be authorized as appropriate.

G. D. *Method of analysis.* ...

D. E. *Determination of constituent concentration.* ...

B. F. *Disputed constituent concentration.* ...

F. G. *Noncompliance notification.* ...

Section 6. *New Castle County Code Chapter 38 ("Utilities"), Article 2 ("Sewers and Sewage Disposal"), Division 38.02.700 (Regulation of non-domestic wastewater discharges into the public sewer system"), Section 38.02.707 ("Property designation") is hereby amended by deleting the material in strikethroughs and adding the material that is underscored, as set forth below:*

Sec. 38.02.707. Property designation.

A. *Compliance.* Any tenant of real property as described in this Section shall comply with all the rules of this Division. In the event that a tenant is unavailable or unresponsive to notices of violations or other correspondence or the tenant's liability cannot be otherwise distinguished from other tenants on the property, the property owner shall be fully and solely responsible for any violations, penalties or damages arising under this Chapter.

...

Section 7. *New Castle County Code Chapter 38 ("Utilities"), Article 2 ("Sewers and Sewage Disposal"), Division 38.02.700 (Regulation of non-domestic wastewater discharges into the public sewer system"), Section 38.02.708 ("Accidental discharges and spill notification") is hereby amended by deleting the material in strikethroughs and adding the material that is underscored, as set forth below:*

Sec. 38.02.708. Accidental discharges and spill notification.

...
C. Preventive measures. All users shall notify the General Manager of any significant changes to the user's operations or system which that may affect the potential for slug discharges at least 90 (ninety) days before the change. The General Manager may require users to develop spill prevention plans where there is a potential for adverse input.

D. Notification of planned changes. All users shall notify the General Manager in advance of any planned significant change in the volume or character of pollutants in the discharge, or notify the General Manager immediately after discovery of any unplanned significant change.

...

Section 8. *New Castle County Code* Chapter 38 ("Utilities"), Article 2 ("Sewers and Sewage Disposal"), Division 38.02.700 (Regulation of non-domestic wastewater discharges into the public sewer system"), Section 38.02.711 ("Regulation of fats, oil and grease produced by commercial food establishments") is hereby amended by deleting the material in strikethroughs and adding the material that is underscored, as set forth below:

Sec. 38.02.711. Regulation of fats, oil and grease produced by commercial food establishments.

A. *General requirements for commercial food establishments.*

...

3. *Recordkeeping.* Each CFE shall maintain a grease trap and/or interceptor maintenance log on a standardized form specified by the Department of Special Services and shall make such log available for inspection by the County upon request. All service receipts, logs and maintenance records shall be kept on file for a minimum of ~~two (2)~~ three (3) years and made available for the County's inspection upon request.
- ...

B. *Administrative fee.*

1. ~~Beginning September 1, 2005, e~~Each CFE ~~will be shall~~ required to pay an annual administrative fee of one hundred dollars (\$100.00) to cover the cost of administering the program. Payment is due on September 1st of each year, and a five (5) percent late penalty will be applied each month starting October 1st of each year. Continued failure to pay will result in enforcement action under Article 3 of this Chapter or the ERP.

The annual administrative fee shall be adjusted each year effective on July 1st to reflect the increase, if any, by which the consumer price index for the most recent year exceeds the consumer price index for the previous year. The amount of the change in the fee shall

be determined by multiplying the existing fee by the percentage change in the consumer price index and rounding the result to the nearest dollar. The consumer price index for any year is the average of the consumer price index for all urban consumers published by the US Department of Labor for the Philadelphia-Wilmington-Atlantic City area as of the close of the twelve (12) month period ending on April 30th of each year. In years that the consumer price index does not change or decreases from the previous year, the fees shall remain the same.

...

Section 9. *New Castle County Code Chapter 38 ("Utilities"), Article 3 ("Prohibitions, Enforcement, and Penalties"), Section 38.03.002 ("Enforcement")* is hereby amended by deleting the material in strikethroughs and adding the material that is underscored, as set forth below:

Sec. 38.03.002. Enforcement.

- A. *Responsibility for enforcement.* All rules and regulations described in this Chapter and adopted by the Department in the Enforcement Response Plan shall be enforced by the General Manager of the Department of Special Services or his or her authorized representative.

...

Section 10. *New Castle County Code Chapter 38 ("Utilities"), Article 3 ("Prohibitions, Enforcement, and Penalties"), Section 38.03.003 ("Penalties")* is hereby amended by deleting the material in strikethroughs and adding the material that is underscored, as set forth below:

Sec. 38.03.003. Penalties.

- ...
- B. *Administrative fines.* Notwithstanding any other section of this Chapter, any person, not including industrial users, who is found to have violated any section of this Chapter or permit or order issued under this Chapter may be fined in an amount not to exceed one thousand dollars (\$1,000.00) per violation, and not exceed a total of five thousand dollars (\$5,000.00), in addition to actual damages to the POTW. Any industrial user who is found to have violated any section of this Chapter or permit or order issued under this Chapter may be fined an amount not to exceed ~~five thousand dollars (\$5,000) per violation~~ one thousand dollars (\$1,000.00) per day for each violation, in addition to actual damages to the POTW, or imprisonment for not more than one (1) year or both. ...

C. ...

D. ...

- E. *Performance bonds.* The General Manager may decline to issue or reissue a wastewater discharge permit to any user who has failed to comply with any provision of this Chapter, permit,

or order issued under this Chapter unless such user first files a satisfactory performance bond, payable to New Castle County, in a sum not to exceed the value set by the General Manager to be necessary to achieve consistent compliance.

- F. Consent orders. The Department of Special Services may enter into consent orders, assurances of compliance or other similar documents establishing an agreement with any user responsible for noncompliance. Such document shall include specific action to be taken by the user to correct the noncompliance within a time period specified by the document. Such document shall have the same force and effect as administrative orders issued pursuant to this Chapter and shall be judicially enforceable.

Section 11. Inconsistent Ordinances and Resolutions Repealed. All ordinances or parts of ordinances and all resolutions or parts of resolutions that may be in conflict herewith are hereby repealed except to the extent they remain applicable to matters reviewed under previous Code provisions as provided in Chapter 38 of the *New Castle County Code*.

Section 12. Severability. The provisions of this Ordinance shall be severable. If any provision of this Ordinance is found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this ordinance shall remain valid, unless the court finds that the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that County Council would have enacted the remaining valid provisions without the unconstitutional or void one; or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with County Council's intent. If any provision of this Ordinance is found to be unconstitutional or void all applicable former ordinances, resolutions, or portions thereof, it shall become applicable and shall be considered as continuations thereof and not as new enactments regardless if severability is possible.

Section 13. Effective Date. This Ordinance shall become effective immediately upon its adoption by County Council and approval by the County Executive or as otherwise provided in 9 Del. C. § 1156, with the exception of the fee adjustments for waste haulers, commercial food establishments, and wastewater discharge permits as set forth herein, which shall become effective on July 1, 2011.

Approved on: 4/24/2011



County Executive
New Castle County

Adopted by County Council of New Castle
County on: 4/12/11



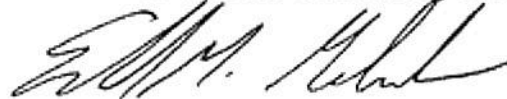
President of County Council

SYNOPSIS:

This Ordinance revises certain provisions in Chapter 38 of the *New Castle County Code* in order to comply with the EPA's Pretreatment Streamlining Rules and to improve the County wastewater pretreatment program.

FISCAL NOTE:

This Ordinance provides that pretreatment program fees in the *New Castle County Code* will be adjusted by the consumer price index. In addition, this Ordinance increases maximum administrative fines for the violations by industrial users.

A handwritten signature in black ink, appearing to read "Ed M. Hehl", is positioned below the fiscal note text.